

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING TEXT AMENDMENT REPORT (#FZTA-21-03)**  
**SECTION 2.08**  
**JANUARY 26, 2022**

**I. GENERAL INFORMATION**

**A. Project Description**

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a proposed amendment to Section 2.08 of the Flathead County Zoning Regulations. The proposed amendment, if approved, would change the zoning text within Section 2.08 Amendments to Text and Districts (Planning Board) to comply with recent changes to 76-2-205 M.C.A. and improve the practicality of administration of the zoning regulations.

**B. Process Overview**

Documents pertaining to the zoning text amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11<sup>th</sup> Street West in Kalispell.

**1. Land Use Advisory Committee/Council**

The amendment is not located within the jurisdiction of a Land Use Advisory Committee.

**2. Planning Board**

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on February 9, 2022, at 6:00 P.M. in the 2nd Floor Conference Room of South Campus Building located at 40 11th Street West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration.

**3. Commission**

The Flathead County Commissioners will hold a public hearing on the proposed amendment on a date to be determined. This space is reserved for a summary of the Commission's decision.

**II. CHARACTERISTICS**

**A. General Character of and Reason for Amendment**

During the 2021 legislative session Senate Bill 294 was passed to remove certain protest provisions that have been invalidated by the Montana Supreme Court which necessitated a text amendment to the zoning regulations to remove the protest provisions from the zoning regulations. The proposed amendment, if approved, would change the zoning text within Section 2.08 Amendments to Text and Districts (Planning Board) to comply with recent changes to 76-2-205 M.C.A. and improve the practicality of administration of the zoning regulations.

**B. Proposed Amendment**

The proposed amendment would amend Sections 2.08.020 and 2.08.030 and remove Section 2.08.050 FCZR. Changes made to the text are *highlighted yellow*, additional texts is *in italics* and language to be removed has a ~~strikethrough~~. The proposed changes are as follows:

- 2.08.020(8) In the event that the Board of County Commissioners approve or amend the requested amendment, a Resolution of Intent shall be passed and a notice of intent to adopt shall be published in a newspaper of general circulation. The publication of the notice shall begin a thirty (30) day ~~protest comment~~ period on the proposed resolution. ~~after which the final reading of the resolution may be considered.~~
- 2.08.020(9) *Within 30 days after the expiration of the comment period, the Board of County Commissioners may in its discretion adopt the resolution amending the text of these regulations. In the event that a written protest against a proposed amendment is filed in the office of the Board of County Commissioners within thirty (30) days of the first publication of the advertisement of the adoption of a Resolution of Intent by the Board of County Commissioners by forty percent (40%) of the freeholders of land within the districts zoned pursuant to Section 76-2-201, et. seq., whose names appear on the latest update of the tax rolls as of the beginning of the protest period, or by freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes or whose property is taxed as forest land, the Board of County Commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.*
- 2.08.020(1)(D) In the event that the Board of County Commissioners approves or amends the requested amendment, a Resolution of Intent shall be passed and a notice of intent to adopt shall be published in a newspaper of general circulation. The publication of the notice shall begin a thirty (30) day ~~protest comment~~ period on the proposed resolution. ~~after which the final reading of the resolution may be considered.~~
- 2.08.020(1)(E) *Within 30 days after the expiration of the comment period, the Board of County Commissioners may in its discretion adopt the resolution creating the zoning district. In the event that a written protest against a proposed amendment is filed in the office of the Board of County Commissioners within thirty (30) days of the first publication of the advertisement of the adoption of a Resolution of Intent by the Board of County Commissioners by forty percent (40%) of the freeholders of land within the district of the proposed amendment whose names appear on the latest update of the tax rolls as of the beginning of the protest period, or by freeholders representing fifty percent (50%) of the titled property ownership whose property is taxed for agricultural purposes or whose property is taxed as forest land, the Board of County Commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.*
- 2.08.050 When a proposed zone change or zoning district falls within the jurisdiction of a City-County Planning Board, the City-County Planning Board, rather than the Flathead County Planning Board, shall have the authority to review the request and make a recommendation to the Board of County Commissioners.

### III. COMMENTS

- A. Legal notice of the Planning Board public hearing on this application was published in the January 23, 2022, edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning text amendment will be physically posted within the county zoning districts according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning text amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning amendment.

- B. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning amendment may do so at the Planning Board public hearing scheduled for February 9, 2022, and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

### IV. EVALUATION OF PROPOSED AMENDMENT

Text amendments to the Flathead County Zoning Regulations are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

- A. **Whether the proposed text amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning text amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R). The following are the goals and policies of the Flathead County Growth Policy that pertain to the proposed text amendment:

The Growth Policy states, "The Growth Policy provides the foundation upon which zoning can be based, pursuant to Section 76-2-201 M.C.A.; in addition to goals and policies made for the purpose of promoting public health, safety, morals and general welfare, the Growth Policy designates appropriate land uses for areas of the County, upon which new zoning (or amendments to existing zoning) can be based."

The Growth Policy goes on to state, "[...], changes to an existing zoning district which may implement a neighborhood plan must follow the process for a zoning text and/or map amendment outlined in Section 76-2-205 M.C.A."

The purpose of this amendment is to update the regulations to comply with Section 76-2-205 M.C.A and therefore would be in compliance with the Growth Policy.

**Finding #1:** The proposed text amendments appear to be supported by the relevant text of the Flathead County Growth Policy because the amendment would update the regulations to remain in compliance with Section 76-2-205 M.C.A.

**B. Whether the proposed text amendment is designed to:**

**1. Secure safety from fire and other dangers;**

The proposal would amend the procedure for a zoning text amendment and a zoning map amendment. The elements contained in the zoning regulations that secure safety from fire and other dangers, more specifically bulk and dimensional standards, are not proposed to be changed.

**Finding #2:** The proposed text amendment is designed to help secure safety from fire and other dangers because the bulk and dimensional requirements on all of the use districts are not proposed to be altered as part of this proposal.

**2. Promote public health, public safety, and general welfare;**

By their very nature, zoning regulations are designed to promote public health, safety, and general welfare. As previously stated, the proposal would amend the procedure for a zoning text amendment and a zoning map amendment and would still allow the same number of opportunities for the public to express concerns over a proposed text amendment or a map amendment.

**Finding #3:** The proposed text amendments would have minimal impact on public health, public safety, and general welfare because the proposal would still allow the same number of opportunities for the public to express concerns over a proposed zoning text amendment or a zoning map amendment.

**3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

It appears that the proposed amendment will not result in any sort of impact on provisions for transportation, water, sewerage, schools, parks, or any other public requirements.

**Finding #4:** The proposed text amendments will continue to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because none of the proposed changes should have any kind of impact to these provision, parks and schools, and the impact on water and sewer would be minimal.

**C. In evaluating the proposed text amendment, consideration shall be given to:**

**1. The reasonable provision of adequate light and air;**

The reasonable provision of adequate light and air typically is achieved through bulk and dimensional requirements. The proposed amendment to Section 2.08 does alter the current bulk and dimensional requirements.

**Finding #5:** The proposed text amendment will reasonably provide for adequate light and air because the bulk and dimensional requirements will remain unchanged.

**2. The effect on motorized and non-motorized transportation systems;**

The proposed text amendments should not have any impact on the County's transportation system, both motorized and non-motorized as it does not change any uses and does not impact a specific area of the County.

**Finding #6:** The proposed text amendment should have no adverse impact on motorized and non-motorized transportation systems because the uses are not changing, and the amendment would not affect regulations that impact motorized and non-motorized transportation.

**3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

Because of the nature of the proposed amendments, the zoning regulations, if approved, will continue to be compatible with urban growth including those areas in close proximity to municipalities. The changes to the regulations are applicable only to Part 2 County zoning in M.C.A. and have no impact on the compatibility with urban growth on the vicinity of cities and towns.

**Finding #7:** The proposed text amendments will have no impact on the compatibility of urban growth in the vicinity of cities and towns because the changes to the regulations are applicable only to Part 2 County zoning in M.C.A.

**4. The character of the district(s) and its peculiar suitability for particular uses;**

The requested amendment is designed to result in compliance with Section 76-2-205 M.C.A. and would not apply to a specific zoning district as it changes the requirements for a zoning text amendment and a zoning map amendment and would be applicable to all County zoning districts created under Part 2.

**Finding #8:** The character of the proposed text amendments does not appear to impact the character of any district or its peculiar suitability for the potential uses because the amendments does not impact a specific district or area of the county.

**5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

As previously stated, the requested amendment is designed to result in compliance with Section 76-2-205 M.C.A. and would not apply to a specific buildings or land in the jurisdictional area, as it changes the requirements for a zoning text amendment and a zoning map amendment and would be applicable to all County zoning districts created under Part 2.

**Finding #9:** The proposed text amendments appear to conserve the value of existing buildings as well as future buildings and encourages the most appropriate use of the land because the amendments does not impact a specific buildings or area of the county.

**D. Whether the proposed text amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

Because of the nature of the proposed amendments, the zoning regulations, if approved, will continue to be compatible with urban growth including those areas in close proximity to municipalities. The changes to the regulations are applicable only to Part 2, County zoning, as Cities have their own procedures as laid out in statute for text amendment. Therefore, the proposed amendment would have no impact compatibility with the zoning regulations of Kalispell, Columbia Falls, or Whitefish.

**Finding #10:** The proposed text amendments will not impact the County zoning regulations compatibility with the regulations of the County's municipalities because many

of the proposed text amendment is to bring the regulations into compliance with Section 76-2-205 M.C.A. which is only applicable to county zoning regulations.

## **V. SUMMARY OF FINDINGS**

1. The proposed text amendments appear to be supported by the relevant text of the Flathead County Growth Policy because the amendment would update the regulations to remain in compliance with Section 76-2-205 M.C.A.
2. The proposed text amendment is designed to help secure safety from fire and other dangers because the bulk and dimensional requirements on all of the use districts are not proposed to be altered as part of this proposal.
3. The proposed text amendments would have minimal impact on public health, public safety, and general welfare because the proposal would still allow the same number of opportunities for the public to express concerns over a proposed zoning text amendment or a zoning map amendment.
4. The proposed text amendments will continue to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because none of the proposed changes should have any kind of impact to these provision, parks and schools, and the impact on water and sewer would be minimal.
5. The proposed text amendment will reasonably provide for adequate light and air because the bulk and dimensional requirements will remain unchanged.
6. The proposed text amendment should have no adverse impact on motorized and non-motorized transportation systems because the uses are not changing, and the amendment would not affect regulations that impact motorized and non-motorized transportation.
7. The proposed text amendments will have no impact on the compatibility of urban growth in the vicinity of cities and towns because the changes to the regulations are applicable only to Part 2 County zoning in M.C.A.
8. The character of the proposed text amendments does not appear to impact the character of any district or its peculiar suitability for the potential uses because the amendments does not impact a specific district or area of the county.
9. The proposed text amendments appear to conserve the value of existing buildings as well as future buildings and encourages the most appropriate use of the land because the amendments does not impact a specific buildings or area of the county.
10. The proposed text amendments will not impact the County zoning regulations compatibility with the regulations of the County's municipalities because many of the proposed text amendment is to bring the regulations into compliance with Section 76-2-205 M.C.A. which is only applicable to county zoning regulations.

## **VI. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to comply with the review criteria, based upon the draft Findings of Fact presented

above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

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